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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/738,364  | 12/17/2003  | Theodore B. Mulle    | 2066/U              | 8555             |
| 47545   | 7590        | 12/20/2005           | EXAMINER            |                  |
| STEVEN A. GARNER, ESQ.<br>CONAIR CORPORATION<br>ONE CUMMINGS POINT ROAD<br>STAMFORD, CT 06902 |             |                      | FRANCIS, FAYE       |                  |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             | 3725                 |                     |                  |

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                          |                     |  |
|------------------------------|--------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b>   | <b>Applicant(s)</b> |  |
|                              | 10/738,364               | MULLE ET AL.        |  |
|                              | Examiner<br>Faye Francis | Art Unit<br>3725    |  |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7-11,13-17,19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7-11,13-17,19 and 20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12/17/03 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The previous rejections under 35 U.S.C. 112 first and second are hereby withdrawn due to the applicant's amendment filed on 9/12/05 canceling or amending the claims to overcome the rejections.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: proper antecedent basis should be provided in the specification for the teaching that the ingress area overlies at least a substantial portion of an outermost portion of the peripheral impact region relative to the center of rotation, as recited in claims 1, 7 and 20 and for the teaching that the ingress area is shaped so as to overlay at least a distal end of the impact region as recited in claims 4, 9 and 16. Additionally, proper antecedent basis should be provided in the specification for the teaching that the processing effect is selected from the group consisting of cutting, slicing, chopping, grinding, mincing, dicing, hashing, pureeing, liquefying, mixing, and any combinations thereof, as recited in claims 5, 11 and 17. No new matter should be entered into the application.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 5, 11 and 17 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, i.e., New Matter.

The specification as originally filed does not provide support for the teaching of "said processing effect is selected from the group consisting of cutting, slicing, chopping, grinding, mincing, dicing, hashing, pureeing, liquefying, mixing, and any combinations thereof " as now recited in claims 5, 11 and 17.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

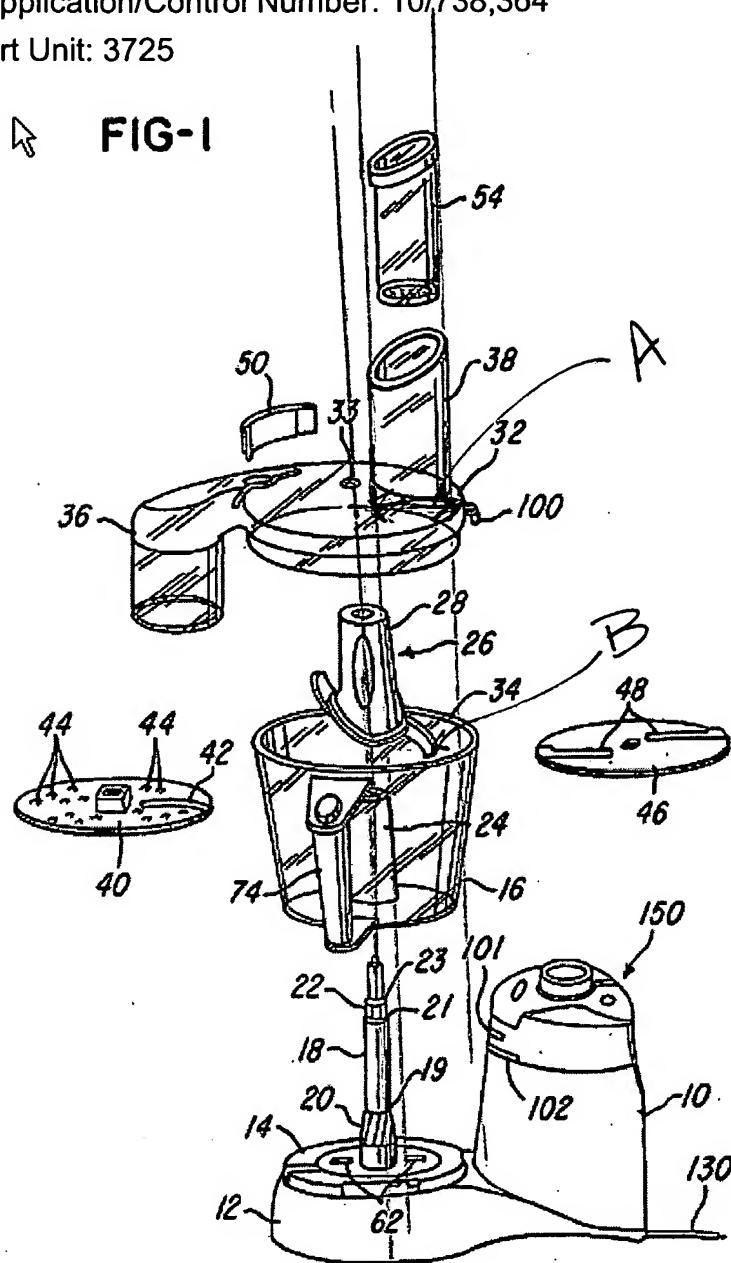
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 7-11, 13-17 and 19-20 are finally rejected under 35 U.S.C. 102(e) as being anticipated by Brady et al [6,748,853], hereinafter Brady.

Brady discloses in Figs 1-12 (also see Figure below wherein the letters A-B have been added by the examiner), a cover assembly for food processing appliance comprising: a cover [lid 32] for cooperating with a container [body member 10, base 12

and bowl 16], the container cooperating with an operating base 12 and 14, the cover having an upper side with a predefined ingress area A, the operating base having a rotating tool 98 with a center of rotation [shaft 18] and a peripheral impact region B and the peripheral impact region being radially distanced from the center of rotation. Also, Brady discloses an accessory [pusher 54] for cooperating with the ingress area, wherein the ingress area overlies at least a substantial portion of an outermost portion of the peripheral impact region relative to the center of rotation and wherein the ingress area does not overlap the center of rotation [see the Figure below] when the cover operatively connected to the container and the container is operatively connected the operating base [shaft 18 enters the bushing 33, see col 6 lines 28-48 and Fig 1] as recited in claims 1, 7 and 13. Additionally, Brady discloses the ingress area has a cross-sectional area **substantially equal** to half that of a lower side of the cover [see the Figure below] as recited in claims 2, 8 and 14 and the ingress area is shaped so as to overlay at least a distal end of the impact region [see the Figure below] as recited in claims 4, 9 and 16.

**FIG-1*****Response to Arguments***

8. Applicant's arguments filed 9/12/05 have been fully considered but they are not persuasive.

The applicant argues on the middle of page 8 that Brady does not disclose or teach a preferable size or shape of the surface area of the delivery chute, and further does not disclose a position of the delivery chute over the cutter or cutter blades.

Therefore, Brady does not disclose a cover assembly for a food processing appliance "wherein said ingress area overlies at least a substantial portion of an outermost portion of the peripheral impact region relative to said center of rotation," as recited in claim 1. In response, the examiner would like to draw the applicant's attention to the above Figure. Applicant should note that the argued limitations are clearly disclosed by Figure 1 of Brady, given the broad reference frame as claimed and disclosed, the relied upon reference shows and meets such broad limitations.

Claims 2-5, 7-11, 13-17 and 19-20 are not patentable for at least reasoning provided above with respect to claim 1 since the independent claims 7 and 13 include recitals similar to claim 1.

In response to applicant's argument on page 9 regarding claims 2, 8 and 14 that Brady nowhere implies or specifies a preferred cross-sectional area of the feed tube and that Brady does not teach or suggest a surface area being "substantially equal" to half that of a lower side of a lid or cover, the examiner would like to again draw the applicant's attention to the above Figure, which clearly discloses the argued limitations. Additionally, please note that the applicant has claimed and disclosed a broad limitation i.e., "**substantially equal**", however, tends to argue a narrow limitation.

Applicant's argument with respect to the Ling reference has been considered but is moot since rejection no longer relied on.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FF



Faye Francis